Supreme Court U.S.
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No. 01-1206

IN THE

Supreme Court of the United States

THE CITY OF DALLAS,

Petitioner,

v.

PETER T. COLE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED RESTATED

The question presented is better restated as:

Does the exception at 49 U.S.C. § 14501(c)(2)(A) preserving the "safety regulatory authority of a State with respect to motor vehicles" allow political subdivisions to regulate the operations of motor carriers of property.

LIST OF PARTIES

There are no parties other than those listed in the caption.

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BRIEF IN OPPOSITION

Respondent, Peter Cole, respectfully submits this Brief in Opposition to the petition for writ of certiorari. This issue is presently before the Court in *Ours Garage and Wrecker Serv. v. City of Columbus*, 257 F.3d 506 (6th Cir. 2001), *cert. granted*, 122 S.Ct. 802 (Jan. 4, 2002) (argued April 23, 2002). The petition presents no legal issue distinct from the petition in *Ours Garage*. Because the Fifth, Sixth, Ninth, and Eleventh Circuits were correct in determining that 49 U.S.C. § 14501(c)(2)(A) does not preserve the authority of political subdivisions to regulate motor carriers of property, the petition for writ of certiorari should be denied.

BACKGROUND

On January 26, 2000, the Petitioner, City of Dallas, Texas ("City") repealed and re-enacted Dallas City Ordinance 24175 ("Chapter 48A") of the Dallas City Code. The relevant portions of Chapter 48A are included in the petition for review at Appendix D. (Pet. at 13a). Respondent, Peter Cole ("Cole") attaches Chapter 48A in its entirety. [1] (App. at 1a). Chapter 48A regulates tow truck operations in the City of Dallas. (App. at 2a). Other cities have enacted ordinances regulating towing operations similar to the City. *See, e.g., Stucky v. City of San Antonio*, 260 F.3d 424 (5th Cir. 2001), *petition for cert. filed*, 70 U.S.L.W. 3465 (U.S. Dec. 13, 2001) (regulations enacted by city of San Antonio); *People Ex rel Renne v. Servantes*, 86 Cal.App.4th 1081 (Cal. Ct. App. 2001), *review denied*,

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[1] It should be noted at the outset that under petitioner's construction every city in which respondent conducts business (as many as 30 separate jurisdictions in and around Dallas/Fort Worth) would be authorized to enact regulations such as c. 48A. (App. 1a-59a).

(Cal. May 16, 2001), *petition for cert. filed*, 70 U.S.L.W. 3162 (U.S. Aug. 14, 2001) (regulations enacted by city of San Francisco).

Cole agrees with the City that, traditionally, cities and States have been free to regulate motor carriers with respect to the *intrastate* transportation of property. (Pet. at 18-19). In 1994, however, Congress enacted the Federal Aviation Administration Authorization Act ("FAAAA"), a sweeping *deregulatory* statute prohibiting States or political subdivisions thereof to enact or enforce laws, regulations, or provisions having the force and effect of law related to the price, route, or service of intrastate motor carriers of property.[2] After passage of the FAAAA, courts struggled with the definition of "motor carrier of property" and whether Congress intended to preempt State and local regulation of tow truck operations. *See, e.g.*, 426 *Bloomfield Ave. Corp. v. City of Newark*, 904 F.Supp. 364 (D.N.J. 1995) (holding after lengthy discussion and analysis that towing companies are not motor carriers for purpose of statute).

Then, in 1995, Congress passed the Interstate Commerce Commission Termination Act of 1995 ("ICCTA").[3] In enacting the ICCTA, Congress made clear it intended to preempt State and local regulation of intrastate towing operations by adding an express exception to the express preemption clause allowing States and political subdivisions to set the maximum price for tows performed without the consent of the owner or operator of the vehicle. 49 U.S.C. § 14501(c)(2)(C). Since the enactment of the ICCTA, courts have unanimously held that § 14501(c)(1) preempts State and local regulation of towing

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[2] Pub. L. No. 103-305, § 601(c), 108 Stat. 1569, 1607 (1994), *codified at* 49 U.S.C. § 11501(h)(1).

[3] Pub. L. No. 104-88, 109 Stat. 803, 804 (1995), *recodified as amended at* 49 U.S.C. § 14501(c)(1).

operations subject to the narrow exceptions at § 14501(c)(2)(A) & (c)(2)(C). *See, e.g., Stucky*, 260 F.3d at 424; *Petrey v. City of Toledo*, 246 F.3d 548 (6th Cir. 2001); *Tocher v. City of Santa Ana*, 219 F.3d 1040 (9th Cir. 2000), *cert. denied*, 531 U.S. 1146 (2001); *Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765 (2d. Cir.), *cert. denied*, 528 U.S. 568 (1999); *R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538 (11th Cir. 1998), *cert. denied*, 526 U.S. 1038 (1999).

This case revolves around the City's attempt to regulate aspects of tow truck operations despite express preemption of same by Congress. As noted above, the City enacted a regulatory scheme directed at tow truck owners and operators including application fees (Dallas City Code Chapter 48A-8, 48A-14), driver's permits (48A-12), company licenses (48A-6), vehicle inspections (48A-44) and criminal penalties for alleged violations of the regulations (48A-50). The City's regulation requires a city-issued driver's permit and declares an individual ineligible for a driver's permit for five years after the individual is released from incarceration on a felony conviction for possession of a controlled substance. (App. at 48A-7). Cole submits that the City lacks authority to regulate tow truck operations, including requiring driver's permits, pursuant to Congress' express directives. Cole also contends that even if the City were allowed to regulate pursuant to § 14501(c)(2)(A), Chapter 48A is not a safety regulation "with respect to motor vehicles," and thus, is still preempted. The City counters that its regulations are saved from preemption en toto by the exception preserving the "safety regulatory authority with respect to motor vehicles" found at 49 U.S.C. § 14501(c)(2)(A). The district court rendered judgment against Cole based upon stipulated facts. (Pet. at 5; 4a-5a). While Cole's appeal was pending, the Fifth Circuit handed down

Stucky, supra. The City conceded that the holding in *Stucky* controlled the disposition of Cole's appeal. The Fifth Circuit vacated the district court's order and remanded the case to the district court. The petition by the City followed. This Court should deny the City's petition for the reasons discussed below.[4]

REASONS FOR DENYING THE WRIT

I. Presumption Against Preemption Inapplicable When Congress' Express Intention Is To Displace State and Local Laws.

The City relies heavily on the presumption that traditional police powers of States are not to be superceded with express direction and argues that Congress failed to specifically prohibit State delegation of authority to political subdivisions. (Pet. at 18). This reliance is misplaced for several reasons. First, this contention was rejected by four of the five federal circuit courts that have considered it. The Second Circuit in *Ace*, however, held that the express language of the statute did not overcome this presumption. The court of appeals in *Ace* based its starting presumption on its treatment of ERISA preemption. *Ace*, 171 F.3d at 773. This presumption is overcome when, as in § 14501(c)(1), Congress undoubtedly intended to displace state and local laws. Cases involving Congress' intention to preempt state law, especially in field preemption cases, lend themselves to the starting presumption that Congress did not intend to supplant state law because in field

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[4] This issue has been fully briefed by the City as an amicus for Petitioner in *Ours Garage, supra.* In addition, counsel for Cole is also counsel for amicus VRC, LLC, which filed an amicus brief in support of Respondent in *Ours Garage.* Counsel for both parties attended oral argument. Notwithstanding, Cole files this response pursuant to the Court's request.

(or implied) preemption cases, courts are required to determine *whether* Congress intended to preempt as opposed to the *extent* of preemption. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 533 (1992) (opinion of Blackmun, J.).

On the other hand, however, it is not appropriate to apply this presumption in *express preemption* cases where Congress was clear and unambiguous as to the scope and purpose of preemption. It would be an odd exercise indeed to measure § 14501(c)(1) against a presumption that Congress did not intend to supplant state and local laws. To do so would require a court to begin its analysis by presuming Congress did not intend to preempt state law despite Congress' express directive to the contrary. Presumably, that is why this Court, in analyzing the *identical preemptive language* from the Airline Deregulation Act ("ADA"),[5] did not apply (or even mention) this presumption in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992) or subsequently in *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). For this reason, it is inappropriate when construing § 14501(c)(1) to begin with the presumption that Congress did not intend to supplant state and local laws.

This Court did, however, make clear in *Cipollone* that "the historic police powers of the States [are] not to be superseded unless that [is] the clear and manifest purpose of Congress." *Cipollone*, 505 U.S. at 516 (*quoting Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). As noted above, this presumption boils down to simply that courts will not assume Congress intended to preempt state laws unless Congress expressly does so, or impliedly does so by occupying the field with its own regulation, or states pass laws that conflict with federal law. There

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[5] 49 U.S.C. § 1305(a)(1) *recodified at* 49 U.S.C. § 41713.

is no dispute in this case that Congress' manifest purpose was to supersede state and local laws. Therefore, the presumption that State laws will not be superseded unless Congress clearly says so is overcome by the fact that Congress, in plain language, said so.

The Second Circuit in *Ace* also made a distinction that regulations imposing only "incidental economic burdens" were not preempted. *Ace*, 171 F.3d at 774. The *Ace* court, however, failed to explain how this finding shielded the regulations from express preemption. The "incidental burden" analysis seems akin to this Court's statement in *Morales* that "some state actions may affect [airline fares] in too tenuous, remote or peripheral a manner to have pre-emptive effect." *Morales*, 504 U.S. at 390 (internal quotations omitted). This Court's statement in *Morales* clearly contemplates a law or state action that would escape the general preemption clause in the first instance. *Id.* (stating with respect to "obscene depictions that "the connection would obviously be far more tenuous."). This point is made crystal clear by this Court's treatment of the Illinois Supreme Court's decision in *Wolens v. American Airlines, Inc.*, 626 N.E.2d 205, 208 (Ill. 1993), holding that frequent flyer programs were not "essential to but merely peripheral to the operation of an airline." *Wolens*, 513 U.S. at 226 ("*Morales*, we are satisfied, does not countenance the Illinois Supreme Court's separation of matters essential from matters unessential to airline operations.") (internal quotations omitted).

In construing § 14501, the court of appeals in *Ace* erred when it balanced the "competing interests" of the presumption against preemption of historic state police powers and the "incidental economic burden" of otherwise preempted regulations. *Ace*, 171 F.3d at 774. Courts are not free to balance competing

interests in the face of a clear and unambiguous directive from Congress. Otherwise, Congress' directive would have little force. Congress has weighed the competing interests involved and has decided in favor of *deregulating* motor carriers of property by expressly preempting state and local regulations in spite of any presumptions to the contrary.

In conducting its balancing act, the court of appeals in *Ace* incorrectly applied this Court's statement in *Morales* as an exception to the express preemption clause. This Court's statement in *Morales* regarding a state law or action that may be too tenuous or remote to be preempted assists courts in determining Congress' intent as to the scope of *whether* a law "relates to" the preempted field. *Californians for Safe and Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998). It does not establish an exception to express preemption. *See id. See also State v. Foley*, 950 S.W.2d 781, 786 (Tex.App.–Austin 1997, no writ) ("Saying state action is too remote, tenuous, or peripheral to fall within a deregulation statute is just another way of saying the legislature did not intend to prohibit the state action of which the plaintiff complains."). In other words, if Congress intended to preempt the subject regulations, the burden imposed on the targeted industry by the regulations is irrelevant. Notwithstanding the presumption against preemption of traditional police powers, because regulations enacted by the City "relate to" the price, route, and service of motor carriers and are not "too tenuous or remote" to be preempted, the court of appeals opinion should be affirmed unless the City demonstrates the challenged regulations fall into one of the exceptions contained in statute.

II. Preservation of State Authority Is Substantive, Not Formal.

At first blush it may seem the reservation of authority exclusively to States is illusory. Scrutiny of the statute and its *deregulatory* purpose, however, reveals that Congress did not intend to simply deny municipalities the honor of enacting regulations only to allow States to enact the same city-specific regulations. If Congress intended to prohibit regulation of motor carriers by political subdivisions and vest that authority exclusively with States proper, then city-specific regulations enacted at the State level would be preempted as well. Congress' primary reason for preempting State and local regulations and preserving only State motor vehicle safety regulations was to *reduce* the number of diverse regulatory schemes with which national and regional carriers are required to comply.

The fact that the State of Texas may enact Chapter 48A applicable only in the city of Dallas, and other regulatory schemes for other specific cities, frustrates, even defeats, Congress attempt to deregulate the motor carrier industry because it *increases* the number and complexity of regulations with which motor carriers have to comply. This result is contrary to Congress' purpose in enacting the ICCTA. *See Tocher*, 219 F.3d at 1048 (purpose of statute to deregulate motor carrier industry because disparate regulation is inefficient and reduced competition and innovation); *Cardinal Towing & Auto Repair v. City of Bedford*, 180 F.3d 686, 695 (5th Cir. 1999) (purpose of statute is elimination of state and local regulation that reduces competition and curtails expansion of markets); *Ace*, 171 F.3d at 772 (purpose of statute was to free motor carrier industry from state and local regulation); *Mayer*, 158 F.3d at 544 (purpose of statute is to foster increased competition in the

motor transportation industry by eliminating a tangled web of state and local regulations). As a result, the reservation of authority to "States" would not allow States to simply enact numerous city or region specific regulations at the State level.

III. Federal Railway Safety Act Is An Example Of Preservation of Exclusive State Safety Authority.

The United States Courts of Appeal for the Fifth and Sixth Circuits and other state and federal courts have faced this issue with regard to similar deregulatory statutes and held that reservation of authority to *States* does not necessarily encompass delegation of that authority to their political subdivisions. *See, e.g., CSX Transportation, Inc. v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996) (holding safety exception granted exclusively to "States" in the Federal Railway Safety Act ("FRSA") did not apply to municipalities); *Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir.), *cert. denied*, 414 U.S. 855 (1973) (holding same with regard to FRSA); *Grand Trunk W. R.R. v. City of Fenton*, 439 N.W.2d 706 (Mich. 1992), *cert. denied*, 507 U.S. 1050 (1993) (holding FRSA safety exceptions apply to State only and not to local governments). *See also Ohio Mfrs. Ass'n v. City of Akron*, 801 F.2d 824, 829 (6th Cir. 1986) (holding omission of political subdivisions in preemption provision of Occupational Safety and Health Act ("OSHA") was intentional).

In *Donelon*, local officials claimed authority to act under a statutory exception allowing *State* safety regulations in the Federal Railway Safety Act[6] ("FRSA"). *Donelon*, 474 F.2d at 1112-113. The Fifth

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[6] Pub. L. No. 91-458, Title II, 84 Stat. 1705 (Oct. 24, 1978), *codified as amended at* 49 U.S.C. § 20101 *et. seq.*

Circuit did not analyze the regulations because, as a threshold matter, the court held that the parish officials of the local government were not a "State" for purposes of the FRSA and therefore did not fit within the exception. *See id.* at 1113 (citing *United Gas Pipeline Co. v. Terrebonne Parish Police Jury*, 445 F.2d 301 (5th Cir. 1971)). The *Donelon* holding was later followed by the Sixth Circuit in *CSX Transportation, Inc. v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996).

In *CSX*, using the same logical approach as *Donelon*, the court of appeals held that the FRSA reserved a specific exception to "States" to regulate railway safety in the absence of regulations promulgated by the Secretary of Transportation. *See id.* at 628. The court was clear that because the City of Plymouth was not a *State* as defined by the statute, its ordinance was preempted even though it was targeted specifically at safety. *See id.* The court of appeals in *CSX* came to this conclusion despite the fact that the City of Plymouth was acting under an express delegation of authority from the State. *CSX*, 86 F.3d at 628 (citing *CSX Transp., Inc. v. City of Thorsby*, 741 F.Supp. 889, 891 (M.D. Ala. 1990) ("It is a city ordinance and not a state law or regulation which is at issue. The fact that the city may have acted on delegated [State] authority does not detract from . . . this dispositive fact.")). This fact bolsters the point made by the Ninth Circuit in *Tocher* that to adopt Petitioner's construction would "lead to the absurd result that Congress can never preempt local regulations and simultaneously leave a state's ability to regulate intact." *Tocher*, 219 F.3d at 1051.[7]

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[7] There are certainly occasions, like that in § 14501(c)(2)(A), on which Congress may wish to preempt regulation by political subdivisions while leaving the States' regulatory authority intact. *See generally, Mortier*, 501 U.S. at 616 (opinion of Scalia, J.) (recognizing that in certain circumstances it could make "eminent sense" to authorize regulation by States but not political subdivisions).

IV. Textual Clues Support Majority Rule.

Under Petitioner's construction, it would be unnecessary to ever define "State" as including political subdivisions. In the ICCTA, Congress has found it necessary, however, to define "State" without including political subdivisions. Petitioner's construction would require this Court to disregard two well-recognized canons of statutory construction requiring courts to (1) give similar language in the same statutory section consistent meaning and (2) all words in a statute should be given effect. *See National Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 502 (1998); *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36 (1992).

Petitioner's construction becomes more untenable given that Congress altered the definition of "State" to *include* political subdivisions within the same statute. This confirms that Congress was well aware that the definition of "State" at § 13102(18) excluded political subdivisions. Otherwise, it would have been unnecessary for Congress to expressly alter the definition of "State" for purposes of specific statutory sections. *See, e.g.*, 49 U.S.C. § 31132(7)-(9).

The clearest example of Congress' intent can be found in § 31142(c)(1)(A)-(C). Congress expressly provided that the Secretary of Transportation promulgate regulations regarding the safety inspection of motor vehicles. 49 U.S.C. § 31142(b). Congress, however, also provided that:

> Except as provided in paragraph (2) of this subsection, this subchapter and section 31102 of this title do not–
>
> (A) prevent a State or voluntary group of States from imposing more stringent

> standards for use in their own periodic roadside inspection programs of commercial vehicles;

49 U.S.C. § 31142(c)(1)(A). This phraseology is similar to that used in § 14501(c)(2)(A) in which Congress declared that the preemption provision in paragraph (1) "shall not restrict" the authority of a State. Here, Congress declared that the inspection provision "do not prevent" a State from imposing more stringent standards. Congress, however, altered the definition of "State" to *include* political subdivisions for purposes of this section. *See* 49 U.S.C. § 31132(7). Thus, had Congress intended "State" to include the regulatory authority of political subdivisions in § 14501(c)(2)(A), Congress could have altered the definition of "State" in § 30101(18) to *include* political subdivisions.

Petitioner's construction that the regulatory authority of a State included the authority to delegate its authority to political subdivisions is belied by the fact that Congress expressly *included* political subdivision in the definition of State for purposes of § 31142 despite Petitioner's contention that authority reserved or conveyed on a State includes the power to delegate that authority. Had Congress intended the result urged by Petitioner, it would have been simple and consistent to simply define "State" to include political subdivisions for purposes of § 14501. In that case, Congress could have declared that a "State" may not enact or enforce the prohibited laws and the exception at § 14501(c)(2)(A) could be worded the same. Instead, however, despite Congress' ability to define State to *include* political subdivisions, and its employment of said definition in other sections of the statute, Congress decided to define State to *exclude* political subdivision. *Compare* 49 U.S.C. § 31132(7) *with* 49 U.S.C. § 13102(18).

Petitioner's construction would render every definition of State that includes political subdivision superfluous and unnecessary because under Petitioner's theory, the authority of a State always includes the power to delegate its authority to its agents. Unfortunately for Petitioner, Congress does not share this view and has gone to great lengths to define terms specifically for purposes of this and many other federal laws.

Further, Petitioner's construction also ignores the qualifying phrase "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). Petitioner contends that its regulations are saved from preemption by the so-called "safety exception." Despite the fact that political subdivisions lack authority to regulate pursuant to § 14501(c)(2)(A), Petitioner's contentions demonstrate a further misreading of the exception. First, the exception is more limited than an exception for "public safety." Section 14501(c)(2)(A) clearly allows continued State regulation of *motor vehicle* safety. "Motor vehicle safety" is defined as

> the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

49 U.S.C. § 30102(a)(8). Thus, Congress narrowed the safety exception with the qualifying phrase "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

The Dallas court of appeals addressed this language:

> Preliminarily, we note that the 'safety exception' is, in part, a misnomer. Rather than being a general exception for safety-related regulation concerning motor carriers, the exception is more narrowly drawn than commonly recognized. . . . Therefore, the preemption provision applies to 'motor carriers,' while the safety exception applies only to 'motor vehicles.' Congress is presumed to choose its words carefully and to mean what it says. We must assume Congress did not mean to exempt all safety regulation pertaining to motor carriers when it used the more narrow qualifying words, 'motor vehicles.'

Whitten v. Vehicle Removal Corp., 56 S.W.3d 293, 305 (Tex.App.–Dallas 2001, pet. filed).

This is made more clear by the fact that in the same exception Congress reserved authority of States to enact regulations with respect to highway routing of hazardous cargo. Certainly, had Congress intended § 14501(c)(2)(A) to be an all-encompassing general welfare exception, it would have been unnecessary to include reference to hazardous cargo or size and weight restrictions as well. *See Whitten*, 56 S.W.3d at 306 ("If the safety exception in the first clause is read so broadly as to include any regulation touching on safety, it would appear the second clause would clearly be encompassed in the first and, therefore, unnecessary."). Notwithstanding political subdivisions lack of regulatory authority, Petitioner's construction of § 14501(c)(2)(A) ignores the text and attempts to squeeze the square peg of permits, application fees, and record requirements into the round hole of motor vehicle safety.

V. Mortier Does Not Mandate Contrary Result.

Petitioner relies heavily on this Court's decision in *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991) to support its construction that § 14501(c)(2)(A) allows local regulation of motor carriers. *Mortier* is inapposite and does not mandate the result urged by Petitioner.

First, *Mortier* dealt with a *regulatory* statute, the Federal Insecticide, Fungicide, and Rodenticide Act[8] ("FIFRA"), which did not seek to supplant State or local authority by its express terms. *Mortier*, 501 U.S. at 606. This Court made clear that FIFRA did not preempt State law in the area of insecticide regulation by express, field, or conflict preemption. *Id.*

FIFRA specifically called for a partnership between the EPA and State and local governments in monitoring and enforcing FIFRA. *Id.* at 615. The Court explained that FIFRA actually encouraged additional State and local regulation. *Id.* at 607. *See also id.* at 614 ("the statute leaves ample room for States and localities to supplement federal efforts"). Obviously, 7 U.S.C. § 136 *et seq.* is distinguishable from 49 U.S.C. § 14501, which leaves no room for State or local regulation save for the narrow exceptions found at § 14501(c)(2)(A) and (c)(2)(C).

Congress expressly preempted state and local regulation of intrastate property transportation. That was not the case with FIFRA. *Mortier*, 501 U.S. at 606 ("FIFRA nowhere expressly supersedes local regulation of pesticide use."). Thus, FIFRA and ICCTA were enacted to serve distinctly different purposes.

FIFRA is also distinguishable from ICCTA in that FIFRA is a public safety regimen that was

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[8] 7 U.S.C.A. § 136 *et.seq.* (1972).

expanded, *i.e.*, made more restrictive, by amendments in 1972. *Mortier*, 501 U.S. at 601 ("1972 amendments transformed FIFRA . . . into a comprehensive regulatory statute.") (internal quotations omitted). FIFRA also included provisions authorizing the EPA director to delegate certain enforcement actions to State and local governmental entities. *Mortier*, 501 U.S. at 601-02, 608. The ICCTA, on the other hand, is a *deregulatory* statute. It strips authority from States and political subdivisions with regard to motor carriers of property completely save for narrowly and carefully crafted exceptions. No partnership is intended and no room for supplementation is afforded.

In *Mortier*, this Court rejected the construction that States were prohibited from delegating authority to political subdivisions under FIFRA despite Congress' exclusive definition of State because *all other factors* utilized in determining Congress' intent recommended against such a construction. FIFRA lacked the "explicit pre-emptive language" necessary to overcome the presumption against federal preemption of State laws. *Mortier*, 501 U.S. at 605. What FIFRA lacked, the ICCTA contains in abundance. In addition to the plain language of the express preemption provision, every interpretive tool at this Court's disposal counsels in favor of finding that Congress intended to prohibit local regulation of motor carriers of property. As a result, the court of appeals was correct, as was the Fifth, Ninth, and Eleventh Circuits, in holding that § 14501(c)(2)(A) does not allow regulation of motor carriers by political subdivisions.

CONCLUSION

This Court should deny Petitioner's writ of certiorari.

Respectfully submitted,

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APPENDIX A

DALLAS CITY CODE

CHAPTER 48A

VEHICLE TOW SERVICE

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ARTICLE I.

GENERAL PROVISIONS.

SEC. 48A-1. STATEMENT OF POLICY.

It is the policy of the city to provide for the protection of the public interest as it relates to the parking of vehicles on private property and to the removal of those vehicles to vehicle storage facilities without the consent of the vehicle owners or operators. To this end, this chapter provides for the regulation of vehicle tow service, to be administered in a manner that protects the public health and safety and promotes the public convenience and necessity. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-2. GENERAL AUTHORITY AND DUTY OF DIRECTOR.

The director shall implement and enforce this chapter and may by written order establish such rules and regulations, consistent with this chapter, as may be determined necessary to discharge the director's duty under, or to effect the policy of, this chapter. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-3. ESTABLISHMENT OF RULES AND REGULATIONS.

(a) Before adopting, amending, or abolishing a rule or regulation, the director shall hold a public hearing on the proposal.

(b) The director shall fix the time and place of the hearing and, in addition to notice required under the Open Meetings Act (Chapter 551, Texas Government Code), as amended, shall notify each licensee and such other persons as the director determines are interested in the subject matter of the hearing.

(c) After the public hearing, the director shall notify the licensees and other interested persons of the action taken and shall post an order adopting, amending, or abolishing a rule or regulation on the official bulletin board in the city hall for a period of not fewer than 10 days. The order becomes effective immediately upon expiration of the posting period. (Ord. Nos. 21435; 24175)

SEC. 48A-4. EXCEPTIONS.

This chapter does not apply to:

(1) a person towing a vehicle with the consent of the vehicle owner or operator;

(2) the removal of a vehicle from private property with the consent of the vehicle owner or operator;

(3) a person parking or storing a vehicle with the consent of the vehicle owner or operator;

(4) the parking or storing of a vehicle with the consent of the vehicle owner or operator; or

(5) a vehicle storage facility at which vehicles are parked or stored solely with the consent of the vehicle owner or operator. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-5. DEFINITIONS.

In this chapter:

(1) CITY means the city of Dallas, Texas.

(2) CHIEF OF POLICE means the chief of police for the city of Dallas or a designated representative.

(3) CONVICTION means a conviction in a federal court or court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.

(4) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter, and includes representatives, agents, and department employees designated by the director.

(5) DRIVER means an individual who drives or operates a wrecker.

(6) HEAVY DUTY WRECKER means a wrecker that has:

(A) a manufacturer's gross vehicle weight rating of not less than 48,000 pounds; and

(B) either:

(i) a power operated winch, winch line, and boom, with a factory-rated lifting capacity of not less than 50,000 pounds and a dual line capacity of not less than 20,000 pounds; or

(ii) an underlift device with a factory-rated lifting capacity of not less than 10,000 pounds when extended.

(7) ILLEGALLY PARKED or UNAUTHORIZED VEHICLE means a vehicle that is:

(A) parked, stored, or located on private property without the consent of the property owner;

(B) parked in or obstructing a fire lane, aisle, entrance, exit, driveway, or other area not designated for the parking of vehicles; or

(C) parked in an area designated for the parking of vehicles but fails to display a valid parking decal, emblem, badge, sticker, ticket, or other identification required by the property owner for parking in a designated area or space.

(8) LAWFUL ORDER means a verbal or written directive that:

(A) is issued by the director in the performance of official duties in the enforcement of this chapter and any rules and regulations promulgated under this chapter; and

(B) does not violate the United States Constitution or the Texas Constitution.

(9) LICENSEE means a person licensed under this chapter to engage in vehicle tow service. The term includes any owner or operator of the licensed business, but does not include a subcontractor unless the use of the subcontractor is authorized pursuant to Section 48A-7(e) of this chapter.

(10) LIGHT DUTY WRECKER means a wrecker that has:

(A) a manufacturer's gross vehicle weight rating of not less than 10,000 pounds; and

(B) either:

(i) a power operated winch, winch line, and boom, with a factory-rated lifting capacity of not less than 8,000 pounds, single line capacity; or

(ii) an underlift device with a factory-rated lifting capacity of not less than 3,000 pounds when extended.

(11) MEDIUM DUTY WRECKER means a wrecker that has:

(A) a manufacturer's gross vehicle weight rating of not less than 18,000 pounds; and

(B) either:

(i) a power operated winch, winch line, and boom, with a factory-rated lifting capacity of not less than 24,000 pounds and a dual line capacity of not less than 8,000 pounds; or

(ii) an underlift device with a factory-rated lifting capacity of not less than 6,000 pounds when extended.

(12) OPERATE means to drive or to be in control of a wrecker.

(13) OPERATOR means the the holder of a vehicle tow service license.

(14) PERMITTEE means an individual who has been issued a wrecker driver's permit under this chapter.

(15) PERSON means an individual, assumed name entity, partnership, joint-venture, association, corporation, or other legal entity.

(16) POLICE DEPARTMENT means the police department of the city of Dallas.

(17) PROPERTY ENTRANCE means any point located on private property that is designed to provide access by a vehicle to the private property.

(18) PROPERTY OWNER means a person, or the person's agent or lessee, who holds legal title, deed, or right-of-occupancy to private property, but does not include a vehicle tow service licensee or an employee or representative of a vehicle tow service licensee.

(19) STREET means any public street, alley, road, right-of-way, or other public way within the corporate limits of the city. The term includes all paved and unpaved portions of the right-of-way.

(20) VEHICLE means a device in, on, or by which a person or property may be transported on a public street. The term includes, but is not limited to, an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer, but does not include a device moved by human power or used exclusively on a stationary rail or track.

(21) VEHICLE OWNER or OPERATOR means a person, or the designated agent of a person, who:

(A) holds legal title to a vehicle, including any lienholder of record; or

(B) has legal right of possession or legal control of a vehicle.

(22) VEHICLE STORAGE FACILITY has the meaning given that term in the Vehicle Storage Facility Act.

(23) VEHICLE STORAGE FACILITY ACT means Article 6687-9a, Vernon's Texas Civil Statutes, as amended.

(24) VEHICLE TOW SERVICE means the business of towing an illegally parked or unauthorized vehicle from private property.

(25) WRECKER means a vehicle designed for the towing of other vehicles.

(26) WRECKER DRIVER'S PERMIT means a permit issued under this chapter to an individual by the director authorizing that individual to operate a wrecker for a vehicle tow service in the city. (Ord. Nos. 19099; 19312; 21435; 23106; 24175)

ARTICLE II.

VEHICLE TOW SERVICE LICENSE.

SEC. 48A-6. LICENSE REQUIRED; APPLICATION.

(a) A person commits an offense if, within the city, he, or his agent or employee:

(1) engages in vehicle tow service for compensation without a valid vehicle tow service license issued by the director under this article;

(2) causes a vehicle to be removed from private property, without the consent of the vehicle owner or operator, by a vehicle tow service not licensed by the director under this article; or

(3) employs or contracts with a vehicle tow service not licensed by the director under this article for the purpose of having a vehicle removed from private property without the consent of the vehicle owner or operator.

(b) To obtain a vehicle tow service license, a person must make written application to the director upon a form provided for that purpose. The application must be signed by the person who will own, control, or operate the proposed vehicle tow service. The application must be verified and include the following:

(1) the name, address, and telephone number of the applicant, the trade name under which the applicant does business, the street address and telephone number of the vehicle tow service establishment, and the name, street address, and telephone number of each vehicle storage facility used by the vehicle tow service;

(2) the number and types of vehicles to be operated, including the year, make, model, vehicle identification number, and state license plate number of, and the type of winch to be operated on, each wrecker;

(3) documentary evidence from an insurance company indicating a willingness to provide liability insurance as required by this chapter;

(4) a statement attesting that each wrecker used by the vehicle tow service has been rendered for ad valorem taxation in the city and that the applicant is current on payment of those taxes;

(5) a list, to be kept current, of the owners and management personnel of the vehicle tow service, and of all employees who will participate in

vehicle tow service, including names, dates of birth, state driver's license numbers, social security numbers, and wrecker driver's permit numbers;

(6) a copy of a written agreement, if one exists, between the vehicle tow service and each vehicle storage facility used by the tow service, other than its own, and proof that each vehicle storage facility used is currently licensed under the Texas Vehicle Storage Facility Act;

(7) a list of what methods of payment the applicant will accept from a vehicle owner for vehicle tow service;

(8) any other information deemed necessary by the director; and

(9) a nonrefundable application processing fee of $50.

(c) A person desiring to engage in vehicle tow service shall register with the director a trade name that clearly differentiates the person's company from all other companies engaging in vehicle tow service and shall use no other trade name for the vehicle tow service. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-7. LICENSE QUALIFICATIONS.

(a) To qualify for a vehicle tow service license, an applicant must:

(1) be at least 19 years of age;

(2) be currently authorized to work full-time in the United States;

(3) be able to communicate in the English language; and

(4) not have been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service;

(vii) theft as described in Chapter 31 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service;

(ix) tampering with a governmental record as described in Chapter 37 of the

Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xii) a violation of the Dangerous Drugs Act (Article 4476-14, Vernon's Texas Civil Statutes), or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xiii) a violation of the Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (4)(A)(i) through (xiii) of this subsection; and

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(5) not be addicted to the use of alcohol or narcotics;

(6) be subject to no outstanding warrants of arrest;

(7) not employ any person who is not qualified under this subsection.

(b) An applicant who has been convicted of, or who employs a person who has been convicted of, an offense listed in Subsection (a)(4), for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a vehicle tow service license only if the director determines that the applicant, or the employee, is presently fit to engage in the business of a vehicle tow service. In determining present fitness under this section, the director shall consider the following:

(1) the extent and nature of the applicant's, or employee's, past criminal activity;

(2) the age of the applicant, or employee, at the time of the commission of the crime;

(3) the amount of time that has elapsed since the applicant's, or employee's, last criminal activity;

(4) the conduct and work activity of the applicant, or employee, prior to and following the criminal activity;

(5) evidence of the applicant's, or employee's, rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the applicant's, or employee's, present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant, or employee; the sheriff and chief of police in the community where the applicant, or employee, resides; and any other persons in contact with the applicant, or employee.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section.

(d) A licensee shall maintain a permanent and established place of business at a location within the city where a vehicle tow service is not prohibited by the Dallas Development Code. A licensee shall use only vehicle storage facilities located within the city where a vehicle storage facility is not prohibited by the Dallas Development Code.

(e) A licensee shall use employees only to provide vehicle tow service; except, that vehicle tow services licensed under this article may subcontract with each other to provide tow service. (Ord. Nos. 19099; 21282; 21435; 24175)

SEC. 48A-8. LICENSE ISSUANCE; FEE; DISPLAY; TRANSFERABILITY; EXPIRATION.

(a) The director shall, within 30 days after the date of application, issue a vehicle tow service license to an applicant who complies with the provisions of this article.

(b) A license issued to a vehicle tow service authorizes the licensee and any bona fide employee to engage in vehicle tow service.

(c) The annual fee for a vehicle tow service license is $1,650, prorated on the basis of whole months. The fee for issuing a duplicate license for one lost, destroyed, or mutilated is $5. The fee is payable to the director upon issuance of a license. No refund of a license fee will be made.

(d) A vehicle tow service license issued pursuant to this article must be conspicuously displayed in the vehicle tow service establishment.

(e) A vehicle tow service license, or any accompanying permit, badge, sticker, ticket, or emblem, is not assignable or transferable.

(f) A vehicle tow service license expires June 30 of each year and may be renewed by applying in accordance with Section 48A-6. Application for renewal must be made not less than 30 days or more than 60 days before expiration of the license and must be accompanied by the annual license fee. (Ord. Nos. 19099; 19300; 21435; 24175)

SEC. 48A-9. REFUSAL TO ISSUE OR RENEW LICENSE.

(a) The director shall refuse to issue or renew a vehicle tow service license if the applicant or licensee:

(1) intentionally or knowingly makes a false statement as to a material matter in an application for a license or license renewal, or in a hearing concerning the license;

(2) has been convicted twice within a 12-month period or three times within a 24-month period for violation of this chapter or has had a vehicle tow service license revoked within two years prior to the date of application;

(3) uses a trade name for the vehicle tow service other than the one registered with the director;

(4) is not qualified under Section 48A-7 of this article;

(5) uses a subcontractor to provide vehicle tow service, unless the use of the subcontractor is authorized pursuant to Section 48A-7(e) of this chapter; or

(6) has been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the applicant to perform vehicle tow service.

(b) If the director determines that a license should be denied the applicant or licensee, the director shall notify the applicant or licensee in writing that the application is denied and include in the notice the specific reason or reasons for denial and a

statement informing the applicant or licensee of the right to, and process for, appeal of the decision. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-10. REVOCATION OF LICENSE.

The director shall revoke a vehicle tow service license if the director determines that the licensee has:

(1) intentionally or knowingly made a false statement as to a material matter in the application or hearing concerning the license;

(2) intentionally or knowingly failed to comply with applicable provisions of this chapter or with the conditions and limitations of the license;

(3) operated a towing service not authorized by the license or other applicable law;

(4) been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the licensee to perform vehicle tow service;

(5) is under indictment for or has been convicted of any felony offense while holding a license;

(6) does not qualify for a license under Section 48A-7 of this chapter; or

(7) failed to pay a license fee required under this chapter. (Ord. Nos. 21435; 24175)

SEC. 48A-11. APPEALS.

Any person whose application for a license or license renewal is denied by the director, or a licensee whose license has been revoked or suspended by the director, may file an appeal with a permit and license

appeal board in accordance with Section 2-96 of this code. (Ord. Nos. 21435; 24175)

ARTICLE III.

WRECKER DRIVER'S PERMIT.

SEC. 48A-12. WRECKER DRIVER'S PERMIT REQUIRED.

(a) A person commits an offense if he operates a wrecker engaged in vehicle tow service in the city without a valid wrecker driver's permit issued to the person under this article.

(b) A licensee commits an offense if he employs or otherwise allows a person to operate for compensation a wrecker owned, controlled, or operated by the licensee unless the person has a valid wrecker driver's permit issued under this article. (Ord. Nos. 21435; 24175)

SEC. 48A-13. QUALIFICATIONS FOR A WRECKER DRIVER'S PERMIT.

(a) To qualify for a wrecker driver's permit, an applicant must:

(1) be at least 19 years of age;

(2) be currently authorized to work full-time in the United States;

(3) hold a valid driver's license issued by the State of Texas;

(4) be able to communicate in the English language;

(5) not be afflicted with a physical or mental disease or disability that is likely to prevent the applicant from exercising ordinary and reasonable control over a motor vehicle or that is likely to otherwise endanger the public health or safety, as determined by a medical doctor licensed to practice medicine in the United States;

(6) not have been convicted of more than four moving traffic violations arising out of separate transactions, nor involved in more than two motor vehicle accidents in which it could be reasonably determined that the applicant was at fault, within any 12 month period during the preceding 36 months;

(7) not have been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, but only if the offense was committed against a person

with whom the applicant came in contact while engaged in vehicle tow service;

(vii) theft as described in Chapter 31 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle tow service,

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xii) a violation of the Dangerous Drugs Act (Article 4476-14, Vernon's Texas Civil Statutes), or of any comparable state or federal law, that is punishable as a felony under the applicable law;

(xiii) a violation of the Controlled Substances Act (Article 4476-15, Vernon's

Texas Civil Statutes), or of any comparable state or federal law, that is punishable as a felony under the applicable law; or

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (7)(A)(i) through (xiii) of this subsection;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(8) not have been convicted of, or discharged by probation or deferred adjudication for, driving while intoxicated:

(A) within the preceding 12 months; or

(B) more than one time within the preceding five years;

(9) not be addicted to the use of alcohol or narcotics;

(10) be subject to no outstanding warrants of arrest;

(11) be sanitary and well-groomed in dress and person;

(12) be employed by the licensee; and

(13) have successfully completed within the preceding 12 months a defensive driving course approved by the Texas Education Agency and be able to present proof of completion.

(b) An applicant who has been convicted of an offense listed in Subsection (a)(7) or (8), for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a wrecker driver's permit only if the director determines that the applicant is presently fit to engage in the occupation of a wrecker driver. In determining present fitness under this section, the director shall consider the following:

(1) the extent and nature of the applicant's past criminal activity;

(2) the age of the applicant at the time of the commission of the crime;

(3) the amount of time that has elapsed since the applicant's last criminal activity;

(4) the conduct and work activity of the applicant prior to and following the criminal activity;

(5) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section and under Section 48A-19 of this article. (Ord. Nos. 21435; 24175)

SEC. 48A-14. APPLICATION FOR WRECKER DRIVER'S PERMIT; FEE.

To obtain a wrecker driver's permit, or renewal of a wrecker driver's permit, a person must file with the director a completed written application on a form provided for the purpose and a nonrefundable application fee of $10. The director shall require each application to state such information as the director reasonably considers necessary to determine whether an applicant is qualified. (Ord. Nos. 21435; 24175)

SEC. 48A-15. INVESTIGATION OF APPLICATION.

(a) For the purpose of determining qualification under Section 48A-13(a)(5), the director may require an applicant to submit to a physical examination conducted by a licensed physician, at applicant's expense, and to furnish to the director a signed statement from the physician certifying that the physician has examined the applicant and that in

the physician's professional opinion the applicant is qualified under Section 48A-13(a)(5).

(b) Upon request of the director, the police department shall investigate each applicant and furnish the director a report concerning the applicant's qualification under Section 48A-13. The municipal court shall furnish the director a copy of the applicant's motor vehicle driving record and a list of any warrants of arrest for the applicant which might be outstanding.

(c) The director may conduct such other investigation as the director considers necessary to determine whether an applicant for a wrecker driver's permit is qualified.

(d) The director shall provide the applicant, upon written request, a copy of all materials contained in the applicant's file to the extent allowed under the Public Information Act (Chapter 552, Texas Government Code), as amended. (Ord. Nos. 21435; 24175)

SEC. 48A-16. ISSUANCE AND DENIAL OF WRECKER DRIVER'S PERMIT.

(a) The director shall issue a wrecker driver's permit to an applicant, unless the director determines that the applicant is not qualified.

(b) The director shall delay until final adjudication the approval of the application of any applicant who is under indictment for or has charges pending for:

(1) a felony offense involving a crime described in Section 48A-13(a)(7)(A)(i), (ii), (iii), (iv), or (v) or criminal attempt to commit any of those offenses; or

(2) any offense involving driving while intoxicated.

(c) The director shall deny the application for a wrecker driver's permit if the applicant:

(1) is not qualified under Section 48A-13;

(2) refuses to submit to or does not pass a medical examination authorized under Section 48A-15(a); or

(3) intentionally or knowingly makes a false statement of a material fact in an application for a wrecker driver's permit.

(d) If the director determines that a permit should be denied the applicant, the director shall notify the applicant in writing that the application is denied and include in the notice the specific reason or reasons for denial and a statement informing the applicant of the right to, and process for, appeal of the decision. (Ord. Nos. 21435; 24175)

SEC. 48A-17. EXPIRATION OF WRECKER DRIVER'S PERMIT; VOIDANCE UPON SUSPENSION OR REVOCATION OF STATE DRIVER'S LICENSE.

(a) Except in the case of a probationary or provisional permit, a wrecker driver's permit expires one year from the date of issuance.

(b) If a permittee's state driver's license is suspended or revoked by the state, the wrecker driver's permit automatically becomes void. A permittee shall notify the director and the licensee for whom the permittee drives within three days of a

suspension or revocation of a state driver's license and shall immediately surrender the wrecker driver's permit to the director. (Ord. Nos. 21435; 24175)

SEC. 48A-18. PROVISIONAL PERMIT.

(a) The director may issue a provisional wrecker driver's permit if the director determines that it is necessary pending completion of investigation of an applicant for a wrecker driver's permit.

(b) A provisional wrecker driver's permit expires on the date shown on the permit, which date shall not exceed 45 days after the date of issuance, or on the date the applicant is denied a wrecker driver's permit, whichever occurs first.

(c) The director shall not issue a provisional permit to a person who has been previously denied a wrecker driver's permit. (Ord. Nos. 21435; 24175)

SEC. 48A-19. PROBATIONARY PERMIT.

(a) The director may issue a probationary wrecker driver's permit to an applicant who is not qualified for a wrecker driver's permit under Section 48A-13 if the applicant:

(1) could qualify under Section 48A-13 for a wrecker driver's permit within one year from the date of application;

(2) holds a valid state driver's license or occupational driver's license; and

(3) is determined by the director, using the criteria listed in Section 48A-13(b) of this article, to be presently fit to engage in the occupation of a wrecker driver.

(b) A probationary wrecker driver's permit may be issued for a period not to exceed one year.

(c) The director may prescribe appropriate terms and conditions for a probationary wrecker driver's permit as the director determines are necessary. (Ord. Nos. 21435; 24175)

SEC. 48A-20. DUPLICATE PERMIT.

If a wrecker driver's permit is lost or destroyed, the director shall issue the permittee a duplicate permit upon payment to the city of a duplicate permit fee of $10. (Ord. Nos. 21435; 24175)

SEC. 48A-21. DISPLAY OF PERMIT.

A wrecker driver shall at all times conspicuously display a wrecker driver's permit on the clothing of the driver's upper body. A wrecker driver shall allow the director or a peace officer to examine the wrecker driver's permit upon request. (Ord. Nos. 21435; 24175)

SEC. 48A-22. SUSPENSION BY A DESIGNATED REPRESENTATIVE.

(a) If a duly authorized representative designated by the director to enforce this chapter determines that a permittee has failed to comply with this chapter (except Section 48A-13) or a regulation established under this chapter, the representative may suspend the wrecker driver's permit for a period of time not to exceed three days by personally serving the permittee with a written notice of the suspension. The written notice must include the reason for suspension, the date the suspension begins, the duration of the suspension, and a statement informing the permittee of the right of appeal.

(b) A suspension under this section may be appealed to the director or the director's assistant if the permittee requests an appeal at the time the representative serves notice of suspension or within 10 days after the notice of suspension is served. When an appeal is requested, the suspension may not take effect until a hearing is provided by the director or the director's assistant.

(c) The director may order an expedited hearing under this section, to be held as soon as possible after the permittee requests an appeal, but at least 10 days advance notice of the hearing must be given to the permittee. The director may affirm, reverse, or modify the order of the representative. The decision of the director is final. (Ord. Nos. 21435; 24175)

SEC. 48A-23. SUSPENSION OF WRECKER DRIVER'S PERMIT.

(a) If the director determines that a permittee has failed to comply with this chapter (except Section 48A-13) or any regulation established under this chapter, the director shall suspend the wrecker driver's permit for a definite period of time not to exceed 60 days.

(b) If at any time the director determines that a permittee is not qualified under Section 48A-13, or is under indictment or has charges pending for any offense involving driving while intoxicated or a felony offense involving a crime described in Section 48A-13(a)(7)(A)(i), (ii), (iii), (iv), or (v) or criminal attempt to commit any of those offenses, the director shall suspend the wrecker driver's permit until such time as the director determines that the permittee is qualified or that the charges against the permittee have been finally adjudicated.

(c) A permittee whose wrecker driver's permit is suspended shall not drive a wrecker for a vehicle tow service inside the city during the period of suspension.

(d) The director shall notify the permittee in writing of a suspension under this section and include in the notice:

(1) the reason for the suspension;

(2) the date the suspension is to begin;

(3) the duration of the suspension; and

(4) a statement informing the permittee of the right of appeal.

(e) The period of suspension begins on the date specified by the director or, in the case of an appeal, on the date ordered by the appeal hearing officer. (Ord. Nos. 19099; 21282; 21435; 24175)

SEC. 48A-24. REVOCATION OF WRECKER DRIVER'S PERMIT.

(a) The director shall revoke a wrecker driver's permit if the director determines that a permittee:

(1) operated a wrecker inside the city for a vehicle tow service during a period when the wrecker driver's permit was suspended;

(2) intentionally or knowingly made a false statement of a material fact in an application for a wrecker driver's permit;

(3) engaged in conduct that constitutes a ground for suspension under Section 48A-23 (a), and, at least two times within the 12-month period preceding the conduct or three times within the 24-month period preceding the conduct, had received either a suspension in excess of three days or a conviction for violation of this chapter;

(4) engaged in conduct that could reasonably be determined to be detrimental to the public safety;

(5) failed to comply with a condition of a probationary permit; or

(6) is under indictment for or has been convicted of any felony offense while holding a wrecker driver's permit.

(b) A person whose wrecker driver's permit is revoked shall not:

(1) apply for another wrecker driver's permit before the expiration of 12 months from the date the director revokes the permit or, in the case of an appeal, the date the appeal hearing officer affirms the revocation; or

(2) operate a wrecker for a vehicle tow service inside the city.

(c) The director shall notify the permittee and the licensee in writing of a revocation and include in the notice:

(1) the specific reason or reasons for the revocation;

(2) the date the director orders the revocation; and

(3) a statement informing the permittee of the right to, and process for, appeal of the decision. (Ord. Nos. 19099; 21282; 21435; 24175)

SEC. 48A-25. WRECKER OPERATION AFTER SUSPENSION OR REVOCATION.

(a) After receipt of a notice of suspension, revocation, or denial of permit renewal, the permittee shall, on the date specified in the notice, surrender the wrecker driver's permit to the director and discontinue operating a wrecker for a vehicle tow service inside the city.

(b) Notwithstanding Section 48A-23(c), Section 48A-24(b), and Subsection (a) of this section, if the permittee appeals a suspension or revocation under this section, the permittee may continue to operate a wrecker for a vehicle tow service pending the appeal unless:

(1) the permittee's wrecker driver's permit is suspended pursuant to Section 48A-23(b) or revoked pursuant to Section 48A-24(a)(6) of this article; or

(2) the director determines that continued operation by the permittee would impose a serious and imminent threat to the public safety. (Ord. Nos. 19099; 21282; 21435; 24175)

SEC. 48A-26. APPEAL FROM DENIAL, SUSPENSION, OR REVOCATION.

(a) If the director denies, suspends, or revokes a wrecker driver's permit, the action is final unless the permittee files an appeal, in writing, with the city manager not more than 10 business days after notice of the director's action is received.

(b) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this section. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling on the basis of a preponderance of the evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or part of the action of the director being appealed. The decision of the hearing officer is final as to available administrative remedies. (Ord. Nos. 19099; 21435; 24175)

ARTICLE IV.

MISCELLANEOUS LICENSEE AND DRIVER REGULATIONS.

SEC. 48A-27. LICENSEE'S AND DRIVER'S DUTY TO COMPLY.

(a) Licensee. In the operation of a vehicle tow service, a licensee shall comply with the terms and conditions of the vehicle tow service license and, except to the extent expressly provided otherwise by the license, shall comply with this chapter, rules and regulations established under this chapter, and other law applicable to the operation of a vehicle tow service.

(b) Driver. While on duty, a driver shall comply with this chapter, regulations established under this chapter, other law applicable to the operation of a motor vehicle in this state, and orders issued by the licensee employing, or contracting with, the driver in connection with the licensee's discharging of its duty under its vehicle tow service license and this chapter. (Ord. Nos. 21435; 24175)

SEC. 48A-28. LICENSEE'S DUTY TO ENFORCE COMPLIANCE BY DRIVERS.

(a) A licensee shall establish policy and take action to discourage, prevent, or correct violations of this chapter by drivers who are employed by, or under contract to, the licensee.

(b) A licensee shall not permit a driver who is employed by, or under contract to, the licensee to drive a wrecker if the licensee knows or has reasonable cause to suspect that the driver has failed to comply with this chapter, the rules and regulations established by the director, or other applicable law. (Ord. Nos. 21435; 24175)

SEC. 48A-29. INSURANCE.

(a) A licensee shall procure and keep in full force and effect automobile liability insurance written by an insurance company that:

(1) is approved by the State of Texas;

(2) is acceptable to the city;

(3) is rated B+ or better, with a financial size of Class VI or higher, by A. M. Best or has an equivalent rating from another insurance rating service approved by the city, unless the insurance company is reinsured for the full insurance required under this section by another insurance company that meets all of the rating requirements of this paragraph and all other requirements of Paragraphs (1), (2), and (4) of this subsection and provides a right of direct action against the reinsurer by any person entitled to claimed insurance benefits against the primary insurance company in the event the primary insurance company does not pay any valid claim; and

(4) does not violate the ownership/ operational control prohibition described in Subsection (j) of this section.

(b) The insurance must be issued in the standard form approved by the Texas Department of Insurance, and all provisions of the policy must be acceptable to the city. The insured provisions of the policy must name the city and its officers and employees as additional insureds. The coverage provisions must provide coverage for any loss or damage that may arise to any person or property by reason of the operation of a vehicle tow service by the licensee, including but not limited to damage to a towed vehicle caused directly or indirectly by improper hookup or improper towing.

(c) The automobile liability insurance must provide combined single limits of liability for bodily injury and property damage of not less than $500,000 for each occurrence, or the equivalent, for each wrecker used by the licensee. Aggregate limits of liability are prohibited.

(d) The insurance for vehicles while being loaded, unloaded, or transported must provide limits of liability of not less than $25,000 for each light duty wrecker and $50,000 for each medium duty or heavy duty wrecker.

(e) If a vehicle is removed from service, the licensee shall maintain the insurance coverage required by this section for the vehicle until the director receives satisfactory proof that all evidence of operation as a wrecker for a vehicle tow service has been removed from the vehicle.

(f) The insurance required under this section must include:

(1) a cancellation provision in which the insurance company is required to notify the director in writing not fewer than 30 days before canceling, failing to renew, or making a material change to the insurance policy;

(2) a provision to cover all vehicles, whether owned or not owned by the licensee, that are operated under the license, except for any vehicle that:

(A) has been subcontracted from another licensee pursuant to Section 48A-7(e) of this chapter; and

(B) is covered by insurance of the other licensee that meets the requirements of this chapter and that includes coverage for use of the vehicle by subcontractors; and

(3) a provision requiring the insurance company to pay every claim on a first-dollar basis.

(g) Insurance required by this section may be obtained from an assigned risk pool if all of the policies and coverages are managed by one agent, and one certificate of insurance is issued to the city.

(h) A license will not be granted or renewed unless the applicant or licensee furnishes the director with such proof of insurance as the director considers necessary to determine whether the applicant or licensee is adequately insured under this section.

(i) If the insurance of a licensee lapses or is canceled and new insurance is not obtained, the director shall suspend the license until the licensee provides evidence that insurance coverage required by this section has been obtained. A person shall not operate a vehicle tow service while a license is

suspended under this section whether or not the action is appealed. A $100 fee must be paid before a license suspended under this section will be reinstated.

(j) No person with any direct or indirect ownership interest in the licensee's vehicle tow service may have any operational control, direct or indirect, in any insurance company that provides insurance required by this section to the vehicle tow service. For purposes of this subsection, "operational control" means holding any management position with the insurance company (including, but not limited to, the chief executive officer, the president, any vice-president, or any person in a decision-making position with respect to insurance claims) or having the right to control the actions or decisions of any person in such a management position in the insurance company. (Ord. Nos. 19099; 21435; 23106; 24175)

SEC. 48A-30. INFORMATION TO BE SUPPLIED UPON REQUEST OF DIRECTOR.

Upon request of the director, a licensee shall submit to the director the following information:

(1) a current consolidated list of vehicles;

(2) a current financial statement that includes a balance sheet and income statement;

(3) names of current officers, owners, and managers; and

(4) a list of current drivers employed by the licensee, with their wrecker driver's permits indicated. (Ord. Nos. 21435; 24175)

SEC. 48A-31. VEHICLE TOW SERVICE RECORDS.

For each vehicle towed by a vehicle tow service, a licensee shall retain any record required pursuant to this chapter, including, but not limited to, towing agreements, photographs, written authorizations for removal, and wrecker slips or tickets, for not less than one year from the date of removal of the vehicle. The licensee shall make the vehicle tow service records available for inspection by the director upon reasonable notice and request. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-32. FAILURE TO PAY AD VALOREM TAXES.

A licensee or an applicant for a vehicle tow service license shall not allow the payment of ad valorem taxes upon any vehicle, equipment, or other property used directly or indirectly in connection with the vehicle tow service to become delinquent. (Ord. Nos. 21435; 24175)

ARTICLE V.

SERVICE RULES AND REGULATIONS.

SEC. 48A-33. REMOVAL OF VEHICLES FROM PUBLIC RIGHTS-OF-WAY.

(a) A licensee commits an offense if, without a valid emergency wrecker service license issued under Chapter 15D of this code, he, either personally or through an employee, subcontractor, or agent, removes a vehicle from:

(1) a public street; or

(2) any area between the property line of private property abutting a public street and the center line of the street's drainage way or the curb of the street, whichever is farther from the property line of the private property.

(b) It is a defense to prosecution under Subsection (a) that the vehicle was removed:

(1) from a portion of public right-of-way leased by the city to the person requesting removal of the vehicle, if such removal was not prohibited by the lease;

(2) by a vehicle tow service currently licensed under this chapter; and

(3) in compliance with all requirements of this chapter and any other applicable city ordinance or state or federal law. (Ord. Nos. 19099; 21435; 23106; 24175)

SEC. 48A-34. REMOVAL OF AUTHORIZED VEHICLES PROHIBITED.

A person commits an offense if he intentionally or knowingly removes or causes the removal of a vehicle, other than an illegally parked or unauthorized vehicle, from private property. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-35. FINANCIAL INTERESTS OF PRIVATE PROPERTY OWNER AND LICENSEE PROHIBITED.

(a) A licensee commits an offense if he, either personally or through an employee, subcontractor, or agent:

(1) directly or indirectly gives anything of value, other than a sign or notice required to be posted under this chapter, to a private property owner in connection with the removal of a vehicle from the private property; or

(2) has a direct or indirect monetary interest in private property from which the licensee for compensation removes an unauthorized vehicle.

(b) An owner of private property commits an offense if he:

(1) accepts anything of value, other than a sign or notice required to be posted under this chapter, from a vehicle tow service in connection with the removal of a vehicle from the private property; or

(2) has a direct or indirect monetary interest in a vehicle tow service that for compensation removes an unauthorized vehicle from the private property.

(c) It is a defense to prosecution under Subsections (a)(2) and (b)(2) that the private property from which the vehicle is removed is a vehicle storage facility licensed under the Texas Vehicle Storage Facility Act. (Ord. Nos. 19099; 21435; 23106; 24175)

SEC. 48A-36. REQUIREMENTS FOR POSTING SIGNS.

(a) A person commits an offense if he removes or causes the removal of a vehicle from private property without signs being posted and maintained on the private property in accordance with this section at the time of towing and for at least 24 hours prior to removal of the vehicle.

(b) Except as otherwise provided by Section 48A-36.2 of this chapter, at least one sign must be placed on the right or left side of each driveway access or curb cut allowing access to the private property. If curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto private property from a public roadway, other than an alley, or if the width of an entrance exceeds 35 feet, signs must be placed at intervals along the entrance so that no entrance is farther than 25 feet from a sign. At least two signs must be placed on the interior of the private property. The director may require one additional interior sign to be posted for each 50 parking spaces over 150 contained on the property.

(c) Each sign required by Subsection (b) to be placed upon private property must:

(1) be approved by the director;

(2) contain:

(A) a bright red international towing symbol, at least four inches high, located on the uppermost portion of the sign or on a separate sign placed immediately above the sign;

(B) the following information immediately below the international towing symbol in white letters on a bright red background:

(i) the words "TOWING ENFORCED" in two-inch high letters; and

(ii) a statement describing who may park at the location and prohibiting all others;

(C) the following information on the next lower portion of the sign in bright red letters at least one inch high on a white background:

(i) the words, "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense"; and

(ii) the days and hours towing is enforced at the location, which may be satisfied by a statement that towing is enforced at all times;

(D) the following information on the bottommost portion of the sign in white letters at least one inch high on a bright red background:

(i) the name, street address, and current telephone number, including area code, of the vehicle tow service;

(ii) the name, street address, and current telephone number, including area code, of the vehicle storage facility to which the vehicle will be towed, if different from the vehicle tow service; and

(iii) a telephone number answered 24 hours a day at which a vehicle owner or operator may obtain information to locate the vehicle, if different from the telephone numbers listed in Subparagraph (D)(i) and (D)(ii);

(3) be at least 24 inches tall and 18 inches wide and constructed of a rigid weather-resistant metal;

(4) be permanently mounted on a pole, post, permanent wall, or permanent barrier;

(5) be readable day and night;

(6) be permanently installed on the private property in a manner and location approved by the director so that the sign is facing and conspicuous to any person entering the property; and

(7) be posted so that the bottom edge of the sign is not lower than five feet nor higher than eight feet above ground level.

(d) In addition to the signs required to be posted under Subsection (b) of this section, the following two signs must be posted and maintained on the interior of the private property in a location and manner approved by the director:

(1) The first sign must meet all of the requirements of Subsection (c) of this section, except that all wording must be in Spanish instead of English and the translation must be approved by the director.

(2) The second sign must comply with form, size, color, and wording requirements established by rule or regulation of the director and must include the following information in both English and Spanish:

(A) the maximum towage fees that may be charged under this chapter and a statement that additional storage, preservation, and notification fees may be charged under the Vehicle Storage Facility Act; and

(B) a statement of how and to whom a complaint concerning a vehicle's removal or a violation of this chapter can be made.

(e) A person commits an offense if, on the same private property, he posts or allows the posting of a sign or signs indicating:

(1) the name of more than one vehicle tow service; or

(2) the name, address, or telephone number of more than one vehicle storage facility.

(f) A person commits an offense if he removes or obstructs or allows the removal or obstruction of a sign required by this section to be posted on private property. It is a defense to prosecution under this subsection that the removal or obstruction was caused by:

(1) a city employee in the performance of official duties; or

(2) the property owner or a licensee or driver of a vehicle tow service authorized by the property owner for the purpose of:

(A) repairing or maintaining the sign;

(B) complying with this chapter or a rule or regulation promulgated under this chapter; or

(C) terminating a vehicle tow service agreement for the private property.

(g) A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

(h) It is a defense to prosecution under Subsection (a) of this section that:

(1) before the vehicle was removed, the property owner provided the owner or operator of the vehicle with notice complying with Section 684.012(b) and (c) of the Texas Transportation Code (which requires the notice to be attached to the vehicle and sent certified mail to the vehicle's registered owner), and the vehicle tow service received written verification from the property owner that the required notice was given; or

(2) the vehicle was removed by or under the direction of a peace officer. [Ord. Nos. 19099; 21435; 23106; 24175, § 48A-36(d) effective 2-1-01]

SEC. 48A-36.1. INDIVIDUAL PARKING RESTRICTIONS IN RESTRICTED AREA.

(a) A private property owner who complies with Section 48A-36 of this chapter may impose further specific parking restrictions in an area to which the signs apply for individual spaces by installing or painting a weather-resistant sign or notice on a curb, pole, post, permanent wall, or permanent barrier so that the sign is in front of a vehicle that is parked in the space when the rear of the vehicle is at the entrance of the space.

(b) The top of the sign or notice may not be higher than seven feet above the ground.

(c) The sign or notice must include an indication that the space is reserved for a particular unit number, person, or type of person.

(d) The letters on the sign or notice must be at least two inches in height and must contrast to the color of the curb, wall, or barrier so they can be read during the day and at night. The letters are not

required to be illuminated or made of reflective material. (Ord. Nos. 23106; 24175)

SEC. 48A-36.2. DESIGNATION OF RESTRICTED PARKING SPACES IN OTHERWISE UNRESTRICTED AREA.

If a private property owner wishes to designate one or more spaces as restricted parking spaces on a portion of private property that is otherwise unrestricted as to parking, the owner must, instead of installing a sign at each entrance to the private property as provided by Section 48A-36(b) of this chapter, place a sign that prohibits unauthorized vehicles from parking in the designated spaces and that otherwise complies with Section 48A-36:

(1) at the right or left side of each entrance to the designated area or group of parking spaces located on the portion of the private property on which parking is restricted; or

(2) at the end of each restricted parking space so that the sign, the top of which may not be higher than seven feet above the ground, is in front of any vehicle that is parked in the space when the rear of the vehicle is at the entrance of the space. (Ord. Nos. 23106; 24175)

SEC. 48A-37. AUTHORIZATION FOR REMOVAL.

(a) A person commits an offense if he removes or causes the removal of a vehicle from private property unless, at the time the vehicle is to be removed:

(1) the property owner signs written authorization for removal of the vehicle by the vehicle tow service; or

(2) a current written agreement exists between the property owner and the vehicle tow service authorizing removal of illegally parked or unauthorized vehicles from the property and a photograph is taken reasonably showing that the removed vehicle was unauthorized or illegally parked on the property.

(b) The written authorization for removal required by Subsection (a)(1) must contain:

(1) a description of the vehicle to be removed, including the year, make, model, color, state license plate number, and vehicle identification number of the vehicle;

(2) the date and time of the vehicle's removal;

(3) the location from which the vehicle is removed;

(4) the reasons for removing the vehicle; and

(5) the signature of the property owner.

(c) The written agreement required by Subsection (a)(2) must:

(1) contain a clear election, signed by the property owner or the property owner's duly authorized agent, as to whether the vehicle tow service is authorized to remove illegally parked and unauthorized vehicles from the property 24 hours a day, seven days a week or only during the normal business hours of the property owner; and

(2) be renewed at least every two years and whenever there is a change in ownership of the property. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-38. RELEASE OF A VEHICLE PRIOR TO REMOVAL.

A licensee or permittee commits an offense if he, either personally or through an employee, subcontractor, or agent, fails to release a vehicle without charge to the vehicle owner or operator, or to the property owner, if the release is requested before the vehicle is removed from the private property on which the vehicle is parked. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-39. REMOVAL OF A VEHICLE WITH A WRECKER.

A licensee or permittee commits an offense if he, either personally or through an employee, subcontractor, or agent, removes a vehicle from private property without:

(1) using a wrecker; or

(2) first completing every procedure required to secure the vehicle to the wrecker or wrecker equipment, including the attachment of any safety chains, so that the vehicle may be safely towed. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-40. NOTIFICATION OF POLICE DEPARTMENT; WRECKER SLIPS OR TICKETS.

(a) A licensee or permittee commits an offense if he, either personally or through an employee, subcontractor, or agent, fails to notify the police department and obtain a tow number within

one hour after the removal of each vehicle from private property.

(b) When notifying the police department for the purpose of obtaining a tow number, the licensee or permittee shall provide the following information:

(1) the location from which the vehicle was removed and the date and time of removal;

(2) the reason for removal of the vehicle;

(3) a physical description of the removed vehicle, including the year, make, model, color, state license plate number, and vehicle identification number of the vehicle;

(4) the trade name of the vehicle tow service; and

(5) the name, address, and telephone number of the vehicle storage facility to which the vehicle was taken.

(c) Upon delivering a vehicle to a vehicle storage facility, the licensee shall provide to the vehicle storage facility a copy of a wrecker slip or ticket containing all of the information required in Subsection (b) and the tow number issued by the police department.

(d) A vehicle storage facility commits an offense if, within two hours after accepting a towed vehicle, it fails to report to the police department the information required by Subsections (b)(1), (3), (4), and (5) of this section. (Ord. Nos. 19099; 21435; 23106; 24175)

SEC. 48A-41. NOTIFICATION OF VEHICLE OWNER.

A licensee or permittee shall provide the owner of any vehicle removed from private property by the licensee with written notice of how and to whom a complaint concerning the vehicle's removal or a violation of this chapter can be made. The notice must specifically state that the vehicle owner has the right to challenge the legality of the tow under Chapter 685, Texas Transportation Code, as amended, and describe the process required for the challenge. (Ord. Nos. 21435; 23106; 24175)

SEC. 48A-42. REMOVAL TO VEHICLE STORAGE FACILITY.

(a) A person commits an offense if he removes or causes the removal of any vehicle from private property to:

(1) any location other than the vehicle storage facility indicated on the signs required by Section 48A-36 of this article; or

(2) a vehicle storage facility that:

(A) is not currently licensed under the Texas Vehicle Storage Facility Act or not in compliance with that act or any rule or regulation promulgated pursuant to that act;

(B) is located outside the city or located inside the city in violation of the Dallas Development Code; or

(C) does not have a sign posted conspicuously at its entrance notifying the vehicle owner of the right to challenge the legality of the tow

under Chapter 685, Texas Transportation Code, as amended.

(b) A licensee or a permittee commits an offense if he, either personally or through an employee, subcontractor, or agent:

(1) fails to remove a vehicle from private property to a vehicle storage facility by the most direct and expeditious route; or

(2) stops at another location while transporting a vehicle removed from private property to a vehicle storage facility. (Ord. Nos. 19099; 21435; 23106; 24175)

ARTICLE VI.

FEE SCHEDULE.

SEC. 48A-43. MAXIMUM FEE SCHEDULE.

(a) The maximum fee that a licensee or permittee may charge for vehicle tow service, regardless of whether a tilt-bed wrecker or a conventional wrecker is used, is:

(1) $95 for towage of a vehicle with a manufacturer's gross vehicle weight rating of not more than 10,000 pounds;

(2) $150 for towage of a vehicle with a manufacturer's gross vehicle weight rating of more than 10,000 pounds but not more than 26,000 pounds; and

(3) $350 for towage of a vehicle with a manufacturer's gross vehicle weight rating of more than 26,000 pounds.

(b) No additional fee may be charged for linkage of a vehicle prior to a tow or for the use of dollies or go-jacks.

(c) If a licensee or permittee tows a stolen vehicle, or a vehicle later determined to be stolen, the licensee or permittee may charge the lawful owner of the vehicle no more than the maximum fee for towage. A vehicle tow service may not charge a fee to the police department if the police department takes custody of a stolen vehicle.

(d) A licensee or permittee commits an offense if he, either personally or through an employee, subcontractor, or agent, charges:

(1) more than the maximum fee allowed by this section for the particular vehicle towed; or

(2) any fee in addition to:

(A) a towage fee lawfully charged under this section; or

(B) a storage, preservation, or notification fee lawfully charged under the Vehicle Storage Facility Act.

(e) A licensee or permittee shall provide a vehicle owner the option of paying the fee for vehicle tow service by cash or a major credit card. (Ord. Nos. 19099; 19300; 21435; 23106; 24175)

ARTICLE VII.

VEHICLES AND EQUIPMENT.

SEC. 48A-44. VEHICLES AND EQUIPMENT.

(a) An applicant or licensee shall submit each wrecker to be used in the vehicle tow service for inspection in a manner determined by the director. Each wrecker must:

(1) if used for towing a vehicle with a manufacturer's gross vehicle weight rating of not more than 10,000 pounds, meet the requirements for a light duty wrecker;

(2) if used for towing a vehicle with a manufacturer's gross vehicle weight rating of more than 10,000 pounds but not more than 26,000 pounds, meet the requirements for a medium duty wrecker;

(3) if used for towing a vehicle with a manufacturer's gross vehicle weight rating of more than 26,000 pounds, meet the requirements for a heavy duty wrecker;

(4) carry, as standard equipment, safety chains and a fire extinguisher;

(5) be maintained in a safe and good working condition and contain equipment that is maintained in a safe and good working condition; and

(6) have permanently affixed to each side of the power unit of the wrecker legible letters and numbers, at least two inches high, in a color that contrasts with the power unit, stating the trade name, address (including city and state), and telephone number (including area code) of the vehicle tow service

and the motor carrier registration number of the wrecker.

(b) Upon inspection and approval of each vehicle, the director shall issue a decal to the applicant or licensee. The decal must be affixed securely to the lower right corner of the windshield of the inspected wrecker.

(c) The director or a peace officer may, at any time, inspect a wrecker used by a licensee for vehicle tow service to determine whether the vehicle complies with this section.

(d) A licensee or permittee commits an offense if he, either personally or through an employee, subcontractor, or agent, uses a light duty, medium duty, or heavy duty wrecker to tow a vehicle that exceeds the manufacturer's gross vehicle weight rating allowed to be towed by the particular wrecker under Subsection (a)(1), (2), or (3), whichever is applicable. (Ord. Nos. 19099; 21435; 23106; 24175)

ARTICLE VIII.

ENFORCEMENT.

SEC. 48A-45. AUTHORITY TO INSPECT.

(a) The director or a peace officer may inspect any vehicle tow service or vehicle storage facility to determine whether the licensee or permittee complies with this chapter, regulations established under this chapter, or other applicable law.

(b) A licensee or permittee, either personally or through an employee, subcontractor, or agent, shall not attempt to interfere or refuse to cooperate with the director or a peace officer in the conduct of any

investigation or discharge of any duty pursuant to this chapter. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-46. ENFORCEMENT BY POLICE DEPARTMENT.

Officers of the police department shall assist in the enforcement of this chapter. A police officer upon observing a violation of this chapter, or of any regulation established by the director pursuant to this chapter, shall take necessary enforcement action to insure effective regulation of vehicle tow service and vehicle storage facilities. (Ord. Nos. 19099; 21435; 24175)

SEC. 48A-47. CORRECTION ORDER.

(a) If the director determines that a licensee, either personally or through an employee, subcontractor, or agent, violates this code, the terms of its license, a regulation established by the director, or other law, the director may notify the licensee in writing of the violation and by written order direct the licensee to correct the violation within a reasonable period of time. In setting the time for correction, the director shall consider the degree of danger to the public health or safety and the nature of the violation. If the violation involves equipment that is unsafe or functioning improperly, the director shall order the licensee to immediately cease use of the equipment.

(b) If the director determines that a violation constitutes an imminent and serious threat to the public health or safety, the director shall order the licensee to correct the violation immediately, and, if the licensee fails to comply, the director shall promptly take or cause to be taken such action as the director considers necessary to enforce the order immediately.

(c) The director shall include in a notice issued under this section an identification of the specific violation, the date of issuance of the notice and the time period within which the violation must be corrected, a warning that failure to comply with the order may result in suspension or revocation of license or imposition of a fine or both, and a statement indicating that the order may be appealed to the city manager. (Ord. Nos. 21435; 24175)

SEC. 48A-48. SERVICE OF NOTICE.

(a) A licensee shall designate and maintain a representative to receive service of notice required under this chapter to be given a licensee.

(b) Notice required under this chapter to be given to:

(1) a licensee must be personally served by the director on the licensee or the licensee's designated representative; or

(2) a driver permitted by the city under Article III must be personally served or sent by certified United States Mail, five day return receipt requested, to the address, last known to the director, of the person to be notified.

(c) Notice required under this chapter to be given a person other than a driver permitted under Article III or a licensee may be served in the manner prescribed by Subsection (b)(2).

(d) Service executed in accordance with this section constitutes notice to the person to whom the notice is addressed. The date of service for notice that is mailed is the date received. (Ord. Nos. 21435; 24175)

SEC. 48A-49. APPEAL.

(a) A licensee may appeal a correction order issued under Section 48A-47 if an appeal is requested in writing not more than 10 days after notice of the order or action is received.

(b) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this section. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling on the basis of a preponderance of evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or a part of the order of the director. The decision of the hearing officer is final. (Ord. Nos. 21435; 24175)

SEC. 48A-50. OFFENSES.

(a) A person commits an offense if he violates a provision of this chapter applicable to him. A culpable mental state is not required for commission of an offense under this chapter unless the provision defining the conduct expressly requires a culpable mental state. A separate offense is committed each day in which an offense occurs. An offense committed under this chapter is punishable by a fine of not less than $200 nor more than $500. The minimum fine established in this subsection shall be doubled for the second conviction of the same offense within any 24-month period and trebled for the third and subsequent convictions of the same offense within any 24-month period. At no time shall the minimum fine exceed the maximum fine established in this subsection.

(b) Prosecution for an offense under Subsection (a) does not prevent the use of other enforcement remedies or procedures applicable to the person charged with the conduct or involved in the offense. (Ord. Nos. 19099; 19963; 21435; 24175)